

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15421 of Douglas Development Corporation, as amended, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) and a variance from the off-street parking requirements (Subsection 2101.1) to convert an existing building for office and retail use in the C-M-2 and R-5-B Districts at premises 2216-18 6th Street, N.W. (Square 3064, Lot 45).

HEARING DATES: January 23, 1991, March 27, 1991 and
June 12, 1991

DECISION DATE: June 12, 1991 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 2218 6th Street, N.W. (Square 3064, Lot 45). It is situated on the west side of 6th Street between Bryant Street and Howard Place N.W.

2. The site is located in the middle of the central campus of Howard University. Immediately to the south of the subject property lies the University power plant. Adjacent to the subject property to the north is the School of Engineering. Across 6th Street to the east is the old Freedmen's Hospital, now being used by the University for classes and administrative offices. The rear of the site abuts a parking lot for Wonder Plaza which is located to the west of the subject property facing Georgia Avenue.

3. The site is split-zoned R-5-B and C-M-2, with the portion of the site in the R-5-B District fronting on 6th Street.

4. The site is comprised of 4,605 square feet of land area. It is improved with a two-story brick building constructed in the early 1900s. The lot measures 82.75 feet along the northern and southern property lines. It measures 55.48 feet along the east and west. The structure contains approximately 7,800 gross square feet of floor space. The structure is 70.9 feet along the north facade and 54.8 feet along the west facade.

5. The first floor of the subject building was originally used as a stable for horses and the second floor was used as a residence for the drivers of horse-drawn wagons for the delivery of bakery products. After the use of horses was discontinued, the building was used to store bakery products. The subject building is currently vacant.

The subject lot (Lot 45) was recently subdivided from Lot 44. Lot 44 is improved with the recently completed Wonder Plaza, a 110,000 square foot retail and office development located at 2301 Georgia Avenue, N.W. Lot 44, is zoned C-M-2. Both lots 44 and 45 are owned by the Douglas Development Corporation, the applicant.

6. The applicant proposes to restore the building and use it for office and/or retail purposes. The applicant also proposes to provide six parking spaces at the rear of the property on the adjacent lot.

7. The applicant maintains that there are a number of exceptional circumstances that create a practical difficulty in using the property for residential purposes.

- a. The property is split-zoned. The C-M-2 zone line runs coterminous with the rear of the building and through the building along the south side creating a very narrow strip of C-M-2 zoning inside the building. The rear property line is located 12 feet behind the structure.
- b. The subject building was previously located on the same lot as the main Wonder Bread Bakery. The split-zoning caused the owner to sever the subject lot from the original lot so that he could proceed with matter-of-right development on the larger site.
- c. The building occupies 85 percent of the lot.
- d. The subject building is constructed with many characteristics that make it suitable for industrial use. There are concrete slab floors that are two feet thick and a concrete slab ceiling, reinforced with trusses. There are three bays that establish the framework of the building. The one on the lower left hand side of the building is a garage door. This garage door is used to exit onto 6th Street as part of a service accessway through the building. There is another garage door immediately to the rear of the 6th Street door that originally connected the service area of the Wonder Bread bakery.
- e. There are windows located on the south side of the building. On the upper level the windows are exposed. However, on the lower level they are bricked up. They cannot be used for residential purposes because they are located on the property

line. The Building and Fire Codes require windows on residential structures to be set back from the property line. Windows cannot be created on the north wall to provide light and air because the north wall goes below grade and it is on the property line. The south side of the building is adjacent to the Howard University power plant and electrical transformers.

- f. On both the first and second levels, the ceiling is approximately 12 feet high from the floor to the underside of the beams.
- g. There is no basement in the subject structure.
- h. There is a doorway or recessed area on the second floor that is connected to the second story of the Wonder Bread Plaza building. There is also a steel structure on the roof of the subject building which is connected to the Wonder Bread Plaza building.

8. The applicant maintains that in addition to the type of construction, the site is an inappropriate location for residential use because it is located adjacent to two parking lots, the Howard University power plant and campus. To the north, across the lot is the School of Engineering. Directly adjacent to the north of the lot is a Howard University parking lot. Across the parking lot to the south is the University's power plant. Across 6th Street facing the subject structure is another building that is part of the University campus.

9. The applicant stated that the site appears never to have been used for residential purposes and its surroundings are not appropriate for residential use. The applicant further maintains that it would be economically infeasible to convert the building to residential use.

10. With regard to parking, the applicant stated that the 12-foot rear yard is inadequate to provide standard size parking spaces. For this reason, a portion of the adjacent lot 44 will be used. Access to the parking area will be from the public alley off of Bryant Street. The entrance to the alley is approximately 40 feet from the rear of the building. There is no other access to the rear of the subject lot from the street.

11. The applicant is proposing to lease a portion of the building to the District of Columbia Institute for Mental Health (the "Institute"), and has proposed to design a portion of the interior for that purpose. In designing the building for the proposed use, the applicant took advantage of the characteristics of the structure. The applicant used the arches at the top of the

building to create an atrium at the building's center. The applicant plans to add more glass to the base of the exterior of the structure on the 6th Street elevation. Glass will also be added on the lower level of the building on the east side. The applicant maintains that with a commercial use, safety glass can be installed. An awning will be placed over the doorway.

12. The applicant's architect testified that fewer modifications would need to be made if the applicant uses the property for office/retail purposes instead of residential purposes. The first floor would require no windows on either side. It would basically only require storefront glass on the 6th Street side.

Retail stores would be placed on each side bay. The one central bay would be used for stairs and an elevator up to the second floor office space. The exterior of the building would take on a retail image with awnings and some signage.

13. Dr. Johanna Ferman, the Medical Director and Chief Executive Officer of the Institute testified at the hearing and submitted a letter addressing the Institute's intentions regarding the subject site. She stated that over the last several months, the Institute has completed preliminary space plans and cost estimates for conversion of the entire building into one of the Institute's four program and community service sites. Facilities are presently located at 3000 Connecticut Avenue, N.W.; 2041 Martin Luther King, Jr. Avenue, S.E.; and 7600 Georgia Avenue, N.W. The site under consideration would be renovated as a new facility for the existing Georgia Avenue Clinic.

Dr. Ferman stated that the Institute is the city's largest nonprofit provider of outpatient mental health services to poor and underinsured children, families and seriously ill adults. It serves some 2,600 people at its three locations within the city. Annually, it provides more than 60,000 hours of service to residents of the District of Columbia.

Dr. Ferman stated that if zoning approval is granted, the Institute will immediately enter into negotiations with the owner, Douglas Jemal Development, for a lease agreement of not less than 10 years. During the lease period, the Institute will offer a variety of health services for adults, children, and families, to include individual and group mental and physical health evaluations and therapies, as well as possible substance abuse treatment and prevention programs. An important component of the program has also been the training of mental health professionals from Departments of Social Work, Psychology and Psychiatry around the city, with active linkages to many graduate programs at universities within the city. For this reason, location near Howard University would be beneficial.

Dr. Ferman testified that the Institute's preliminary plans call for moving the Institute's central management offices to the first floor of the building, until clinic operations, and possible other new allied programming slated to initially occupy the upper floor, can be expanded to occupy the entire building.

The Institute anticipates that there will be approximately 17 to 20 staff persons on the second floor. Of this number, only five will be full-time staff. The remaining persons will be part-time staff who come and go throughout the day. There will be about 12 people on the executive office staff who work on the first floor. Also, as the clinic grows, more of the services will be moved to the first floor level.

Initially, there will be between 40 and 60 patients coming to the facility daily. As the services grow that number will increase. Operating hours will be weekdays during regular daytime business hours, and evenings and weekends as needed.

The Institute gets referrals from a number of sources. Among these are hospitals such as St. Elizabeths, Greater Southeast, George Washington and Howard; the Commission on Mental Health Services; Community agencies like The Green Door; the probation office; and the offices of physicians and therapists who cannot see the patients at reduced rates. People also learn about the facility by word of mouth.

14. In terms of parking, Dr. Ferman testified that the staff will use the six parking spaces that the applicant is providing behind the property. They will also use the parking lot on Georgia Avenue for additional parking. She stated that most of the patients use public transportation. The site is served by the metrobus system and the nearest metrorail station is only about four blocks away.

15. The Office of Planning, by report dated June 11, 1991 and through testimony at the hearing, recommended denial of the subject application. OP stated that the applicant is proposing to restore both floors of an existing two-story brick structure for retail or service use or, in the alternative, retail or service use on the first floor and office use on the second floor. The subject structure contains 7,800 gross square feet of floor space. The structure is currently vacant.

OP stated that the R-5-B District permits matter-of-right development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8 and a maximum height of 60 feet. The C-M-2 District permits medium bulk

commercial and light manufacturing uses, to a maximum FAR of 4.0 and a maximum height limit of 60 feet, with new residential uses prohibited.

OP stated that the subject building is located on land zoned R-5-B. The interior of the existing structure would be substantially renovated to accommodate the proposed retail use on the first floor and office use on the second floor. The exterior of the building would be refurbished with its original character being maintained.

The remaining portion of the site at the rear of the building is zoned C-M-2. This rear portion would contain the trash dumpster and five parking spaces. However, portions of the parking spaces and the dumpster location would be extended onto Lot 44 because the remaining portion of the subject site at the rear of the subject building does not provide the necessary land area for the parking spaces and the dumpster.

The applicant indicated to OP that in addition to the five parking spaces that would be provided at the rear of the building, some parking spaces from the adjoining Wonder Plaza parking lot would be devoted to the proposed project in order to meet the parking requirements. Wonder Plaza contains a total of 42 parking spaces, 20 more than the 22 spaces required by the Zoning Regulations.

OP pointed out that the applicant has identified the D.C. Institute for Mental Health as a potential lessee for the subject building. The applicant has submitted to the record schematic plans for the institute which illustrate the location of offices, clinics and treatment areas on both the first and second floors of the building. However, because there is currently no lease signed between the applicant and the Institute, the applicant cannot confirm that the Institute would be the definite lessee. OP maintains that without such a confirmation, it is unable to analyze the requested use variance within the criteria set by the Zoning Regulations. OP stated that the applicant has not provided information to establish a hardship indicating that the site can not be used for an R-5-B use. Also, without a specific use identified, it is not possible for OP to evaluate compatibility with the existing neighborhood.

OP stated that because the property is split-zoned, the office has been unable to determine what the off-street parking requirements would be. Therefore, OP could not recommend approval of a parking variance.

Notwithstanding its recommendation for denial of the application, the Office of Planning, in its report expressed its views about the use by the Institute in the event that this use is

implemented. OP stated that the subject site is located in the middle of Howard University's 89-acre central campus. The site is surrounded with buildings that are being used for classrooms, administrative offices for the University, and other institutional uses related to the University. The only exception to the institutional uses surrounding the subject site is the Wonder Plaza which is located directly behind the subject site. The Wonder Plaza is a recently completed development containing 44,000 square feet of retail space, 75,000 square feet of office space and a parking area with 42 parking spaces. In the opinion of the Office of Planning, if the D.C. Institute for Mental Health becomes the eventual lessee of the subject building, it will be a desirable use for the site and it will also be highly compatible with the institutional uses already established in the area by Howard University.

The Office of Planning referred the application to the following government agencies for review and comment:

Department of Public Works;
D.C. Fire Department;
Department of Consumer and Regulatory Affairs;
Department of Finance and Revenue; and
Metropolitan Police Department.

16. By letter dated October 11, 1990, the Metropolitan Police Department stated that it does not appear that the change proposed by this application will affect the public safety in the immediate area or that it will generate an increase in the level of police services now being provided. Accordingly, the department does not oppose the application.

17. By memorandum dated October 26, 1990, the Fire Department stated that it has no objection to the request by the applicant.

18. By memorandum dated January 24, 1991, the Department of Public Works expressed its objections to the applicant's request because the applicant had not provided the department with sufficient information to make a recommendation.

19. By report dated June 4, 1991 and through testimony at the public hearing, Advisory Neighborhood Commission 1B expressed its support for the application.

The ANC expressed a preference for the proposed office use over the light industrial use that previously existed at the site.

The ANC stated that the 12 feet of space at the rear of the property is inadequate to accommodate the parking spaces required. The ANC therefore supports the variance to allow parking on the adjacent lot.

ANC 1B pointed out that the subject property was never used for residential purposes. Therefore, there will be no displacement of residential users in the R-5-B portion of the property.

In the ANC's opinion, no detriment to the public good will result from the variances requested because the off-street parking requirement will be met in close proximity to the site, and improving the site will enhance the potential for employment opportunities in the area.

Finally, ANC 1B was of the view that granting the variance will not impair the integrity of the zone plan because the proposed use will bring the property into a single zone category and eliminate the existing zoning use conflict at the site. Based on its analysis, the ANC requested that the Board grant the relief requested.

20. No other testimony was heard in support of the application.

21. Mr. Charles K. Barber, Deputy General Counsel for the Howard University, testified in opposition to the application on behalf of the university. He stated that the university opposes the application for a number of reasons.

Sixth Street, the street on which the property is located, is like "Main Street" for Howard University. If the applicant is allowed to use the property for retail purposes, the use will have a detrimental effect on the University. People who are attracted to this type of use will create pedestrian and vehicular traffic on the main campus. Such traffic will be detrimental to the safety of the University's students, faculty, and staff. A retail use will create potentially large crowds, traffic congestion and noise. It will also create problems in terms of security for those walking on campus because it will attract people with no legitimate connection to the University.

Mr. Barber stated that the University is not as opposed to the proposed office use as it would be to some other uses because less traffic is likely to be created when people who come to the site have appointments. He pointed out, however, that the level of impact depends upon the type of office that occupies the site. Mr. Barber indicated that the applicant has been unable to assure that the use will be limited to the Institute. The University is concerned that at a later date a more objectionable user will occupy the property. The University acknowledges that the applicant has agreed to prohibit the following uses of the site:

1. Bar or cocktail lounge;
2. Gasoline service station;
3. Automobile accessories sales;

4. Electric appliance store;
5. Food or grocery store;
6. Restaurant;
7. Off-premises alcoholic beverage sales; and
8. Hotel or inn.

The University maintains that while the list excludes some uses, it does not exclude other uses which the University deems unacceptable. Such uses would be radio and television repair shops, watch repair shops, bicycle repair shops, and hardware, paint, jewelry and sporting good stores. The University believes that these uses would be appropriate on a commercial strip like Georgia Avenue, but not on a street like Sixth Street.

Mr. Barber testified that in the University's view, the six parking spaces will be inadequate to meet the needs of the Institute.

22. The University believes that the applicant has failed to demonstrate a unique condition or an undue hardship with regard to the property. The University believes that the applicant could make reasonable use of the property in compliance with the Zoning Regulations. The University does not agree that the structural characteristics preclude use of the property for some residential purposes. Mr. Barber stated that some of the structural characteristics relied upon by the applicant were irrelevant. One such characteristic is the size of the floors. Also, with regard to the window issue, he stated that ventilation can be created; however, he was unsure about how to handle the egress problem.

23. The University believes that the proposed use variance would be harmful to the public good because it would allow a myriad of uses to occupy the site. It would be especially harmful to the University because of the loss of control over its campus, the increased security risks to the University population, and the disturbance of the quiet setting required for the pursuit of academic excellence.

24. The University maintains that to grant the variance relief would impair the zone plan and that the subject application does not represent responsible development.

25. No other parties appeared at the hearing to testify in the subject application.

FINDINGS OF FACT:

Based on the foregoing summary of evidence the Board finds as follows:

1. The structural characteristics of the property are unique and unsuitable for residential uses.

2. The rear yard is inadequate to provide the required off-street parking spaces.

3. The applicant and the District of Columbia Institute for Mental Health intend to enter a lease agreement for use of the subject property.

4. The list of prohibited uses proposed by the applicant is acceptable. It is acceptable to the Board to allow the other permitted uses at the site. The other permitted uses will not have an adverse impact on the area.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a use variance and a variance from the off-street parking requirements to convert an existing building for office and retail uses on property split-zoned C-M-2 and R-5-B. The granting of a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. For a use variance, the applicant must demonstrate that the property cannot be used for any purpose for which it is zoned. The Board must further find that the granting of the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan in accordance with the Zoning Regulations and Map.

The Board concludes that the applicant has met this burden of proof. The Board concludes that the property is split-zoned and that the building was constructed for industrial use. The Board concludes that the windows on the lower level cannot provide natural light and ventilation because they are bricked up. Moreover, other windows in the building are located on the property line. The Board concludes that these are unique conditions that make the property inappropriate for residential use.

The Board concludes that the uses proposed by the applicant will not be of substantial detriment to the public good. The Board further concludes that to allow the uses proposed will not substantially impair the intent, purpose or integrity of the zone plan.

The Board concludes that the rear yard of the subject lot is only 12 feet deep. The Board concludes that there is inadequate space to provide on-site parking spaces. The Board concludes that

this condition creates a practical difficulty for the owner in meeting the requirements of the Zoning Regulations.

The Board concludes that parking will be provided on the adjacent lot and that to grant the requested variance from the parking requirements will not be of substantial detriment to the public good. The Board is further of the opinion that granting the parking variance will not impair the intent, purpose or integrity of the zone plan.

The Board concludes that it has accorded ANC 1B the "great weight" to which it is entitled.

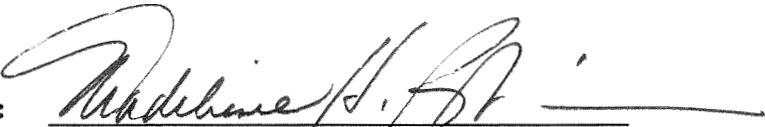
In light of the foregoing, the Board concludes that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The property shall be used for office, retail, and service uses generally permitted in the C-1 District except that the following specified uses shall be prohibited:
 - a. bar or cocktail lounge;
 - b. gasoline service station;
 - c. auto accessories sales;
 - d. electrical appliance store;
 - e. food or grocery store; and
 - f. restaurant.
2. The applicant shall provide six parking spaces on the adjacent Wonder Plaza parking lot and four parking spaces at the commercial lot fronting on Georgia Avenue for the exclusive use of employees and visitors to the subject premises.

VOTE: 3-0 (Charles R. Norris, Sheri M. Pruitt and Carrie L. Thornhill to grant; Paula L. Jewell not voting, having recused herself; Tersh Boasberg not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

OCT 27 1992

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PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15421Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15421

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 27 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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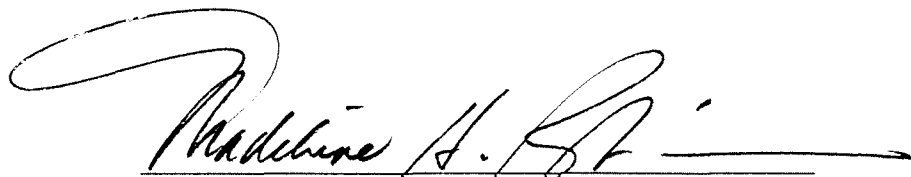
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MADELIENE H. ROBINSON
Acting Director

DATE: OCT 27 1992